

1-1 By: Harris S.B. No. 351
1-2 (In the Senate - Filed February 4, 2003; February 11, 2003,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 April 3, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 3, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 351 By: Williams

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of persons who repossess motor vehicles;
1-11 providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle A, Title 5, Occupations Code, is
1-14 amended by adding Chapter 902 to read as follows:

1-15 CHAPTER 902. REPOSSESSION SERVICES

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 902.001. DEFINITIONS. In this chapter:

1-18 (1) "Commission" means the Texas Commission of
1-19 Licensing and Regulation.

1-20 (2) "Department" means the Texas Department of
1-21 Licensing and Regulation.

1-22 (3) "Executive director" means the executive director
1-23 of the department.

1-24 (4) "Lender" means:

1-25 (A) a state or national bank;
1-26 (B) a state or federal savings and loan
1-27 association or savings bank;

1-28 (C) a credit union; or
1-29 (D) a person that holds a license issued under
1-30 Chapter 348, Finance Code.

1-31 (5) "Motor vehicle" has the meaning assigned by
1-32 Section 501.002, Transportation Code.

1-33 (6) "Repossession" means the recovery of a motor
1-34 vehicle that has been sold or leased under a security agreement that
1-35 contains a repossession clause by an individual authorized by the
1-36 legal owner, lienholder, or lessor to recover the motor vehicle or
1-37 to collect payment in lieu of recovery.

1-38 (7) "Repossession agent" means an individual who
1-39 engages in a repossession for consideration.

1-40 (8) "Repossession company" means a business entity
1-41 that primarily engages in the business of performing, or advertises
1-42 that the business entity performs, repossessions for
1-43 consideration.

1-44 Sec. 902.002. APPLICABILITY OF OTHER LAW. Chapter 51
1-45 applies to this chapter, including the power to impose an
1-46 administrative sanction, assess an administrative penalty, or seek
1-47 a civil penalty for a violation of this chapter or a rule or order
1-48 adopted or entered under this chapter.

1-49 [Sections 902.003-902.050 reserved for expansion]

1-50 SUBCHAPTER B. GENERAL POWERS AND DUTIES

1-51 Sec. 902.051. RULES. The executive director may adopt
1-52 rules necessary to administer this chapter.

1-53 Sec. 902.052. FEES. The commission may by rule set fees in
1-54 amounts reasonable and necessary to administer this chapter.

1-55 Sec. 902.053. DIRECTORY OF LICENSE HOLDERS. (a) The
1-56 department shall annually prepare a directory of license holders.

1-57 (b) The department shall provide the directory to the public
1-58 on request without charge.

1-59 (c) The department may comply with this section by
1-60 publishing the directory on-line.

1-61 Sec. 902.054. INVESTIGATIONS. (a) The department may
1-62 examine:

1-63 (1) a record maintained under this chapter; or

2-1 (2) a record or object the department determines is
 2-2 necessary to conduct a complete investigation.

2-3 (b) To administer this chapter, the department may question
 2-4 a person who:

2-5 (1) is associated with the business of a license
 2-6 holder; or

2-7 (2) claims that the person was negatively affected by
 2-8 a violation of this chapter committed by a license holder.

2-9 Sec. 902.055. AUDIT. The department may periodically audit
 2-10 the business records of a license holder.

2-11 Sec. 902.056. PROPER TOWING EQUIPMENT. With the advice of
 2-12 the Texas Department of Transportation and the Department of Public
 2-13 Safety, the executive director shall adopt rules as necessary to
 2-14 ensure that a vehicle used for a repossession by a license holder is
 2-15 a tow truck suitable in terms of safety, considering factors such as
 2-16 size, towing capacity, and the use of other equipment.

2-17 Sec. 902.057. ADVISORY COMMITTEE. (a) The executive
 2-18 director may create an advisory committee to advise the executive
 2-19 director regarding regulation under this chapter.

2-20 (b) The executive director may abolish the advisory
 2-21 committee at any time.

2-22 [Sections 902.058-902.100 reserved for expansion]

2-23 SUBCHAPTER C. LICENSE REQUIREMENTS

2-24 Sec. 902.101. LICENSE REQUIRED. (a) A person may not
 2-25 engage in a repossession for consideration unless each individual
 2-26 who engages in the recovery holds a repossession agent license.

2-27 (b) A person may not advertise that the person performs
 2-28 repossessions unless the person holds a repossession agent or
 2-29 repossession company license.

2-30 (c) A person may not hire a person to engage in a
 2-31 repossession unless the person hired holds a license issued under
 2-32 this chapter.

2-33 Sec. 902.102. LICENSE CLASSIFICATIONS. The executive
 2-34 director shall issue a repossession agent or repossession company
 2-35 license to an eligible applicant.

2-36 Sec. 902.103. LICENSE APPLICATION. (a) A license
 2-37 applicant must submit an application on a form prescribed by the
 2-38 department.

2-39 (b) The application must specify the class of license for
 2-40 which the applicant is applying.

2-41 (c) An application for a repossession agent license must be
 2-42 accompanied by:

2-43 (1) the application fee; and

2-44 (2) the examination fee.

2-45 (d) An application for a repossession company license must
 2-46 be accompanied by:

2-47 (1) the application fee;

2-48 (2) the license number of each employee who holds a
 2-49 repossession agent license; and

2-50 (3) a copy of the current sales tax permit issued to
 2-51 the applicant by the comptroller under Chapter 151, Tax Code, or, if
 2-52 the department determines that technology allows, the applicant may
 2-53 submit the applicant's tax identification number to the department
 2-54 for submission by the department to the comptroller for electronic
 2-55 verification.

2-56 (e) The department shall deny an application provided under
 2-57 Subsection (d) if the applicant's sales tax permit is canceled,
 2-58 suspended, or revoked under Subchapter F, Chapter 151, Tax Code.

2-59 Sec. 902.104. ELIGIBILITY REQUIREMENTS FOR REPOSSESSION
 2-60 AGENT LICENSE; BACKGROUND CHECK. (a) An applicant for a
 2-61 repossession agent license must be at least 18 years old.

2-62 (b) The department shall conduct a criminal background
 2-63 check on the applicant as authorized under Chapter 411, Government
 2-64 Code.

2-65 (c) The applicant is not eligible for a license if the
 2-66 applicant has been finally convicted of a felony or misdemeanor
 2-67 that directly relates to the duties and responsibilities of the
 2-68 licensed occupation.

2-69 (d) The executive director may deny an application if the

3-1 applicant previously held a repossession agent license and the
3-2 license was revoked.

3-3 (e) Except as provided by Subsection (c), Chapter 53 applies
3-4 to this chapter.

3-5 Sec. 902.105. EXAMINATION FOR REPOSSESSION AGENT LICENSE.

3-6 (a) The executive director shall require an examination for a
3-7 repossession agent license.

3-8 (b) The executive director shall prescribe the method and
3-9 content of the examination and shall set compliance requirements
3-10 for the examination.

3-11 (c) The examination shall be offered at least annually or
3-12 more frequently as determined by the executive director.

3-13 (d) The examination shall be offered at various locations in
3-14 this state as determined by the executive director.

3-15 Sec. 902.106. EXAMINATION RESULTS. (a) Not later than the
3-16 30th day after the date on which a person takes a licensing
3-17 examination under this chapter, the department shall notify the
3-18 person of the results of the examination.

3-19 (b) If the examination is graded or reviewed by a testing
3-20 service:

3-21 (1) the department shall notify the person of the
3-22 results of the examination not later than the 14th day after the
3-23 date the department receives the results from the testing service;
3-24 and

3-25 (2) if notice of the examination results will be
3-26 delayed for longer than 90 days after the examination date, the
3-27 department shall notify the person of the reason for the delay
3-28 before the 90th day.

3-29 (c) The department may require a testing service to notify a
3-30 person of the results of the person's examination.

3-31 (d) If requested in writing by a person who fails a
3-32 licensing examination administered under this chapter, the
3-33 department shall furnish the person with an analysis of the
3-34 person's performance on the examination.

3-35 Sec. 902.107. ISSUANCE OF LICENSE; TERM. (a) On payment
3-36 of the license fee, the department shall issue the appropriate
3-37 license to an applicant who:

3-38 (1) meets the requirements of this subchapter;

3-39 (2) provides evidence of any insurance coverage
3-40 required by the executive director in accordance with this chapter;
3-41 and

3-42 (3) passes the examination, if the application is for
3-43 a repossession agent license.

3-44 (b) A license is valid for one year from the date of
3-45 issuance.

3-46 Sec. 902.108. RULES REGARDING RENEWAL. The executive
3-47 director may adopt rules regarding the renewal of a license,
3-48 including rules requiring confirmation of the continued
3-49 eligibility of the license holder before renewal.

3-50 Sec. 902.109. LICENSE EXPIRATION AND RENEWAL. (a) A
3-51 person who is otherwise eligible to renew a license may renew an
3-52 unexpired license by paying the required renewal fee to the
3-53 department before the expiration date of the license. A person
3-54 whose license has expired may not engage in activities that require
3-55 a license until the license has been renewed.

3-56 (b) A person whose license has been expired for 90 days or
3-57 less may renew the license by paying to the department a renewal fee
3-58 that is equal to 1-1/2 times the normally required renewal fee.

3-59 (c) A person whose license has been expired for more than 90
3-60 days but less than one year may renew the license by paying to the
3-61 department a renewal fee that is equal to two times the normally
3-62 required renewal fee.

3-63 (d) A person whose license has been expired for one year or
3-64 more may not renew the license. The person may obtain a new license
3-65 by complying with the requirements and procedures, including the
3-66 examination requirements, for obtaining an original license.

3-67 (e) A person who was licensed in this state, moved to
3-68 another state, and is currently licensed and has been in practice in
3-69 the other state for the two years preceding the date of application

4-1 may obtain a new license without reexamination. The person must pay
 4-2 to the department a fee that is equal to two times the normally
 4-3 required renewal fee for the license.

4-4 (f) Not later than the 30th day before the date a person's
 4-5 license is scheduled to expire, the department shall send written
 4-6 notice of the impending expiration to the person at the person's
 4-7 last known address according to the records of the department.

4-8 Sec. 902.110. BOND AND INSURANCE REQUIREMENTS. The
 4-9 executive director by rule shall set bond and insurance
 4-10 requirements for license holders.

4-11 Sec. 902.111. CONTINUING EDUCATION REQUIREMENTS FOR
 4-12 REPOSSESSION AGENTS. (a) The executive director by rule shall
 4-13 require continuing education as a condition for renewal of a
 4-14 repossession agent license.

4-15 (b) The continuing education requirements may not exceed
 4-16 four hours annually.

4-17 Sec. 902.112. CONTINUING EDUCATION PROVIDERS AND COURSE
 4-18 APPROVAL. (a) The executive director by rule shall recognize,
 4-19 prepare, or administer continuing education programs for its
 4-20 license holders.

4-21 (b) The executive director by rule shall recognize and
 4-22 approve continuing education providers.

4-23 Sec. 902.113. RECIPROCITY; WAIVER OF LICENSE REQUIREMENT.
 4-24 The executive director may waive any prerequisite to obtaining a
 4-25 license for an applicant after reviewing the applicant's
 4-26 credentials and determining that the applicant holds a license
 4-27 issued by another jurisdiction that has licensing requirements
 4-28 substantially equivalent to those of this state.

4-29 Sec. 902.114. PROVISIONAL REPOSSESSION AGENT LICENSE.

4-30 (a) The executive director may issue a provisional repossession
 4-31 agent license to an applicant currently licensed in another
 4-32 jurisdiction who seeks a license in this state and who:

4-33 (1) has been licensed in good standing as a
 4-34 repossession agent for at least two years in another jurisdiction,
 4-35 including a foreign country, that has licensing requirements
 4-36 substantially equivalent to the requirements of this chapter;

4-37 (2) has passed a national or other examination
 4-38 recognized by the executive director relating to repossession
 4-39 procedures and requirements; and

4-40 (3) is sponsored by a person licensed by the
 4-41 department under this chapter with whom the provisional license
 4-42 holder will practice during the time the person holds a provisional
 4-43 license.

4-44 (b) The executive director may waive the sponsorship
 4-45 requirement under Subsection (a)(3) for an applicant if the
 4-46 executive director determines that compliance with that subsection
 4-47 would be a hardship to the applicant.

4-48 (c) A provisional license is valid until the date the
 4-49 department approves or denies the provisional license holder's
 4-50 application for a repossession agent license.

4-51 (d) The executive director shall issue a repossession agent
 4-52 license under this chapter to a provisional license holder if:

4-53 (1) the provisional license holder is eligible to be
 4-54 licensed under Section 902.113 or passes the part of the
 4-55 examination under Section 902.105 that relates to the applicant's
 4-56 knowledge and understanding of the laws and rules of this state
 4-57 relating to repossession; and

4-58 (2) the executive director verifies that the
 4-59 provisional license holder satisfies any other applicable
 4-60 licensing requirements under this chapter.

4-61 (e) The executive director must approve or deny a
 4-62 provisional license holder's application for a repossession agent
 4-63 license not later than the 180th day after the date on which the
 4-64 provisional license is issued. The executive director may extend
 4-65 the 180-day period if the results of an examination have not been
 4-66 received by the department before the end of that period.

4-67 (f) The commission may establish a fee for provisional
 4-68 licenses in an amount reasonable and necessary to cover the cost of
 4-69 issuing the license.

5-1 [Sections 902.115-902.150 reserved for expansion]
 5-2 SUBCHAPTER D. OPERATION OF REPOSSESSION COMPANY; FACILITY
 5-3 REQUIREMENTS

5-4 Sec. 902.151. DEFINITION. In this subchapter, "storage
 5-5 facility" means the area where a repossession company stores a
 5-6 repossessed motor vehicle.

5-7 Sec. 902.152. OFFICE; HOURS. A repossession company shall
 5-8 maintain a permanent office with regular office hours of not less
 5-9 than eight hours per day Monday through Friday, excluding legal
 5-10 holidays, during which a person may claim personal property from a
 5-11 repossessed motor vehicle.

5-12 Sec. 902.153. STORAGE OF REPOSSESSED MOTOR VEHICLE. A
 5-13 repossession company shall store a repossessed motor vehicle inside
 5-14 a storage facility that complies with the requirements of this
 5-15 subchapter.

5-16 Sec. 902.154. ENCLOSURE AND SECURITY AT FACILITY.
 5-17 (a) Each storage facility shall be:

5-18 (1) completely enclosed by a fence at least six feet
 5-19 high; and
 5-20 (2) locked when the license holder or an employee of
 5-21 the license holder is not at the facility.

5-22 (b) A repossession company shall secure a repossessed motor
 5-23 vehicle to prevent theft of the vehicle or its contents, including
 5-24 locking doors, closing windows and hatchbacks, and raising or
 5-25 covering convertible tops.

5-26 Sec. 902.155. FACILITY SURFACE. A storage facility must
 5-27 contain an all-weather surface such as concrete, asphalt,
 5-28 black-top, stone, macadam, limestone, iron ore, gravel, shell, or
 5-29 caliche. The surface must enable the safe and effective movement of
 5-30 the vehicle on all portions of the lot, both under the vehicle's own
 5-31 power and under tow, at all times and regardless of weather
 5-32 conditions.

5-33 Sec. 902.156. FACILITY LIGHTING. A repossession company
 5-34 shall maintain lighting at the storage facility sufficient to allow
 5-35 inspection of a repossessed motor vehicle for damage at the time of
 5-36 the vehicle's release, including at least a 250-watt light bulb for
 5-37 each quarter acre of storage area.

5-38 Sec. 902.157. FACILITY SIGNS. A repossession company shall
 5-39 post a clearly visible and readable sign at the storage facility's
 5-40 main entrance. The sign shall:

5-41 (1) use letters at least two inches in height, with
 5-42 contrasting background;
 5-43 (2) be visible from at least 10 feet;
 5-44 (3) contain the street address of the facility; and
 5-45 (4) contain the repossession company's name, address,
 5-46 phone number, office hours, and license number.

5-47 Sec. 902.158. SHARING OF STORAGE FACILITY PROHIBITED. A
 5-48 repossession company may not share a storage facility with another
 5-49 repossession company.

5-50 Sec. 902.159. ENTRY OF TOW TRUCKS. A repossession company
 5-51 may not permit a tow truck to enter its storage facility unless the
 5-52 tow truck complies with the rules adopted under Section 902.056.

5-53 [Sections 902.160-902.200 reserved for expansion]

5-54 SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

5-55 Sec. 902.201. USE OF PROPER TOWING EQUIPMENT. A
 5-56 repossession agent may not engage in a repossession unless the tow
 5-57 truck used by the agent complies with department rules regarding
 5-58 safety.

5-59 Sec. 902.202. USE OF FORCE; BREACH OF THE PEACE. A
 5-60 repossession agent may not use force or breach the peace when
 5-61 engaging in a repossession.

5-62 Sec. 902.203. EMPLOYMENT OR HIRING OF REPOSSESSION AGENT.
 5-63 (a) A licensed repossession agent may not engage in a repossession
 5-64 unless the agent is hired or employed by a licensed repossession
 5-65 company or a lender.

5-66 (b) A person may not hire or employ a licensed repossession
 5-67 agent unless the person is a licensed repossession company or a
 5-68 lender.

5-69 Sec. 902.204. DUTY TO REPORT REPOSSESSION TO LAW

6-1 ENFORCEMENT. Not later than two hours after engaging in a
6-2 repossession, a repossession agent shall report the repossession to
6-3 the police department of the municipality in which the recovery
6-4 occurred or, if the recovery was not located in a municipality
6-5 having a police department, to the sheriff of the county in which
6-6 the recovery occurred. The report must include:

6-7 (1) the license number and telephone number of each
6-8 repossession agent engaging in the repossession;

6-9 (2) the location at which the repossession occurred
6-10 and the location at which the motor vehicle is stored; and

6-11 (3) a description of the motor vehicle recovered,
6-12 including identification information such as a vehicle
6-13 identification number and the state and number of a license plate.

6-14 [Sections 902.205-902.250 reserved for expansion]

6-15 SUBCHAPTER F. ENFORCEMENT

6-16 Sec. 902.251. CEASE AND DESIST ORDERS. The department may
6-17 issue a cease and desist order.

6-18 Sec. 902.252. CIVIL PENALTIES. (a) Except as provided by
6-19 Subsection (b), a person who violates this chapter is subject to a
6-20 civil penalty under Section 51.352 of not less than \$2,000 for the
6-21 first violation and not less than \$4,000 for each subsequent
6-22 violation.

6-23 (b) A repossession company or lender who violates this
6-24 chapter is subject to a civil penalty of not less than \$4,000 for
6-25 the first violation and not less than \$8,000 for each subsequent
6-26 violation.

6-27 Sec. 902.253. CRIMINAL PENALTY. (a) A person commits an
6-28 offense if the person knowingly engages in a repossession without
6-29 holding a license issued under this chapter.

6-30 (b) Each repossession of a motor vehicle constitutes a
6-31 separate offense.

6-32 (c) An offense under this section is a Class B misdemeanor.

6-33 SECTION 2. Subsection (a), Section 411.093, Government
6-34 Code, is amended to read as follows:

6-35 (a) The Texas Department of Licensing and Regulation is
6-36 entitled to obtain from the department criminal history record
6-37 information maintained by the department that relates to a person
6-38 who is:

6-39 (1) an applicant for a license under:

6-40 (A) Chapter 902, Occupations Code; or

6-41 (B) Chapter 2052, Occupations Code [~~the Texas~~
6-42 ~~Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil~~
6-43 ~~Statutes)]~~; or

6-44 (2) the holder of a license under those chapters [~~that~~
6-45 ~~Act~~].

6-46 SECTION 3. (a) A person is not required to obtain a license
6-47 under Subchapter C, Chapter 902, Occupations Code, as added by this
6-48 Act, until September 1, 2004.

6-49 (b) The executive director of the Texas Department of
6-50 Licensing and Regulation shall adopt rules as required under
6-51 Chapter 902, Occupations Code, as added by this Act, not later than
6-52 June 1, 2004.

6-53 SECTION 4. (a) Except as provided by Subsection (b) of
6-54 this section, this Act takes effect September 1, 2003.

6-55 (b) Subchapters D, E, and F, Chapter 902, Occupations Code,
6-56 as added by this Act, take effect September 1, 2004.

6-57 * * * * *